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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 42930 & 42931
Plaintiff-Respondent,)	
)	Kootenai County Case No.
v.)	CR-2013-20461 &
)	CR-2013-22021
MICHAEL KARL PARKER,)	
)	
Defendant-Appellant.)	RESPONDENT'S BRIEF
)	

Issue

Has Parker failed to establish that the district court abused its discretion either by relinquishing jurisdiction and executing his concurrent underlying unified sentences of five years, with two years fixed, imposed upon his guilty pleas to burglary, or by denying his Rule 35 motions for sentence reduction?

Parker Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Parker pled guilty to one count of burglary in each of the underlying cases and the district court allowed him to participate in Drug Court prior to sentence being imposed. (R., p.69.) Just over two months later a Report of Drug Court Violation was

filed alleging Parker had failed to attend and/or complete several required treatment sessions, associated with another probationer, failed to report to his probation officer as directed, failed to submit to urinalysis testing as directed, and consumed both alcohol and methamphetamine. (R., pp.72-74.) Parker admitted to the Drug Court violations as alleged, and the district court imposed concurrent unified sentences of five years, with two years fixed, and retained jurisdiction for 365 days. (R., pp.87-92.)

After a period of retained jurisdiction, the district court relinquished jurisdiction and ordered Parker's sentences executed without reduction. (R., pp.12, 112-14.) Parker timely appealed from the district court's order relinquishing jurisdiction, and timely filed Rule 35 motions for sentence reduction, which the district court denied. (R., pp.115-18, 122-25, 135-36, 143-44.)

Parker asserts the district court abused its discretion when it relinquished jurisdiction in light of his "desire to make changes to his life," his community support, his progress during his Rider, and his acceptance of responsibility. (Appellant's brief, pp.3-5.) The record supports the sentence imposed.

"Probation is a matter left to the sound discretion of the court." I.C. § 19-2601(4). The decision to relinquish jurisdiction is a matter within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of that discretion. See State v. Hood, 102 Idaho 711, 712, 639 P.2d 9, 10 (1981); State v. Lee, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). A court's decision to relinquish jurisdiction will not be deemed an abuse of discretion if the trial court has sufficient information to determine that a suspended sentence and probation would be

inappropriate under I.C. § 19-2521. State v. Chapel, 107 Idaho 193, 194, 687 P.2d 583, 584 (Ct. App. 1984).

Parker is not an appropriate candidate for probation. At the jurisdictional review hearing, the state addressed Parker's "pattern of dishonesty," his failure to take accountability for his actions, his continued criminal thinking and behavior, and his failure to use any of the resources available to him either in Drug Court or while on his Rider. (11/26/14 Tr., p.53, L.16 – p.57, L.15 (Appendix A).) The district court subsequently articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for relinquishing jurisdiction. (11/26/14 Tr., p.64, L.4 – p.69, L.15 (Appendix B).) The state submits that Parker has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpts of the jurisdictional review hearing transcript, which the state adopts as its argument on appeal. (Appendices A and B.)

Parker next asserts that the district court abused its discretion when it denied his Rule 35 motion for sentence reduction. (Appellant's brief, pp.5-6.) If a sentence is within applicable statutory limits, a motion for reduction of sentence under Rule 35 is a plea for leniency, and this court reviews the denial of the motion for an abuse of discretion. State v. Huffman, 144 Idaho, 201, 203, 159 P.3d 838, 840 (2007). To prevail on appeal, Parker must "show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the Rule 35 motion." Id. Parker has failed to satisfy his burden.

Parker's "new" information in support of his Rule 35 motion consisted of his testimony that he was staying in touch with his case manager, abiding by the rules,

taking classes, and had stable housing and treatment in the community through “Pastor Rick.” (03/02/15 Tr., p.5, L.20 – p.8, L.11.) This is not “new” information that merits a reduction in Parker’s sentences, particularly because Parker was fully expected to follow the rules and participate in programs while incarcerated. Parker has had previous opportunities for both outpatient treatment in the community and inpatient treatment through the IDOC while on his Rider; however, he has made little to no effort to participate in any of these treatment programs, has continued his use of illegal drugs, and repeatedly disregarded the rules. (R., pp.72-74, 110-11; See generally APSI.) At the Rule 35 hearing, the district court articulated the correct legal standards applicable to its decision and set forth in detail its reasons for denying the motion. (03/02/15 Tr., p.11, L.13 – p.14, L.8 (Appendix C).) The state submits that Parker has failed to establish an abuse of discretion, for reasons more fully set forth in the attached excerpt of the Rule 35 hearing, which the state adopts as its argument on appeal. (Appendix C.)

Conclusion

The state respectfully requests this Court to affirm Parker’s conviction and sentence.

DATED this 16th day of December, 2015.

/s/
LORI A. FLEMING
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of December, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JUSTIN M. CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 THE COURT: If you're comfortable or you can
2 sit if you feel better, sir.

3 THE WITNESS: When I first got sentenced to
4 that rider, I'll never forget you told me that being an
5 addict and choosing to live that life is not a disease;
6 It's a life choice. And I went down there eager to
7 change my life, eager to do the programming and learn
8 new things. I enjoyed the program work. I just always
9 just found myself lost in communication with my
10 counselor Ray McCall, with my peers down there and the
11 accountability system down there.

12 I did use all those tools and I feel like I
13 have gained a lot from that. But, most of all, being
14 able now, through the little bit of help I've had
15 through Dr. Carlberg and, really, finally, after 24
16 years of my life being able to purely feel a change in
17 my mind. The way I handle things. Being able to open
18 up. Being able to just be honest no matter the
19 consequences. Just going after everything with --
20 wholeheartedly and just, you know, hope for the best
21 through everything. And realize that not everybody is
22 out to punish me or hurt me. People are out there
23 trying to help me and I just need to be able to grasp
24 that.

25 And I feel like that is just something I've

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1 programming that you have to do after you're released on
2 probation. You know, I had worries from how am I going
3 to get from place to place, you know, where am I going
4 to live that is truly healthy for me. Because I have
5 lived in unhealthy situations for so many years.

6 That when I was learning the things that the
7 program offered me and I was working through those
8 steps, new light bulbs were coming on saying, you know
9 what, Michael, you can't put yourself in that situation
10 even if it is your home with your mother and your
11 family. You just can't do it. You have to be willing
12 to change everything. And that scared me because I
13 didn't have any other options. So, yes, that is true.

14 THE COURT: All right. Thank you.

15 State's recommendation, please.

16 MS. MALEK: Your Honor, the state is
17 recommending relinquishment of jurisdiction in these
18 cases and the reasons for the state's recommendations
19 are numerous.

20 I guess the first thing I would like to
21 address is I appreciate both chaplains who were able to
22 come here today and testify, and my recommendations are
23 in no way -- or should be seen as reflective of their
24 hard work or anything to insult them. I appreciate the
25 time they took to meet with Mr. Parker in custody. I

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1 truly learned over this past, you know, ten months I've
2 been incarcerated, through the chaplains, through my
3 rider program, through the psychologist, through my
4 education. It's just things have been unfolding in my
5 life they have never been before. Like someone's
6 offered to put me in their home. I mean, that's never
7 happened before. I've lived on the streets. I just
8 never had these things truly happen in my life until
9 now.

10 And I am blessed with it, but also I got to
11 take accountability for my mistakes that I've made. The
12 bad C-notes, the DORs, you know, for just stupid rules
13 that I compensated for. I just was not -- just didn't
14 handle things properly and I've learned from that and I
15 just pray no matter what I just grow from any situation
16 that comes from today or any other day.

17 THE COURT: Thank you.

18 Both of the chaplains that have testified,
19 testified about things going badly for you down on the
20 rider when it looked like you were about ready to get
21 out.

22 Is that what you told those men?

23 THE DEFENDANT: I didn't necessarily tell them
24 that. It was an underlying fear. Because along with
25 all the other programming and stuff, there's a rider

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1 think that their insights were valuable; however,
2 putting that aside, there is some serious issues even
3 with the testimony that was presented today on behalf of
4 Mr. Parker that give the state concerns about anything
5 but relinquishing jurisdiction in this case.

6 The first, your Honor, is the, I guess I would
7 call it, the pattern of dishonesty, is what the state
8 views it as. Mr. Parker told or relayed to both the
9 chaplains that, you know, he was through and had
10 completed all of his programming and then didn't
11 graduate or got a relinquishment recommendation. Well
12 looking through the APSI report, that's just not true.
13 He, first of all, requested to be self-relinquished back
14 in June -- end of June it seems like.

15 He had been dishonest with staff while he was
16 in custody. He made a false report of his radio being
17 stolen at one point in time. He did not complete his
18 programming. There was two programs in particular that
19 he didn't complete. One was a new direction and the
20 other course was the pre-release programming as well.

21 And so there is serious concerns about honesty
22 here. And I'm sure the Court is aware of the mental
23 health drug court program that we have in Kootenai
24 County, and one of the foremost important issues and
25 factors is honesty. Honesty regarding the choices that

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<p>1 you make and what you've done and owning up to mistakes 2 that you've made. And that's the other portion of it as 3 well.</p> <p>4 One of the programming that Mr. Parker was 5 asked to do and to complete revolved around being honest 6 about mistakes that he had made or rules that he had 7 broken or other offenders had broken. He refused to 8 complete that part of the program specifically. Now if 9 you're not taking accountability for what you've done 10 wrong, that's a serious issue in any sort of 11 rehabilitation or being a good candidate for probation 12 from the getgo.</p> <p>13 The other issue that the state is concerned 14 about is in regards to the medications itself. While 15 Mr. Parker did get on some medication and it did have 16 some effects, some calming effects it sounds like, there 17 was also this behavioral while he was in the rider 18 program of selling or giving or trading his medications 19 to other individuals. And, specifically, that was 20 the -- I think it's the Buspar or medication and that 21 was included in the APSI as well.</p> <p>22 He -- this case started out as a theft-related 23 case and then we have him incarcerated again and he's 24 stealing or taking commissary from other individuals 25 while incarcerated. The same type of behavior -- nature</p> <p style="text-align: center;">55</p>	<p>1 and behavior that landed him incarcerated to begin with. 2 Now, Pastor Rick mentioned unknown situations 3 and how he is -- how he has seen Mr. Parker essentially 4 react negatively when he's faced with unknown 5 situations, but the pattern that we have and the 6 programming that Mr. Parker has had available to him to 7 complete really negates that. The drug court program is 8 a highly, highly structured program. There really isn't 9 a whole lot of unknowns there.</p> <p>10 There's a specific contract. There are 11 meetings. They are very specific about what they would 12 like to see in the expectations in that programming. 13 Same thing for the rider program, There is a booklet of 14 rules. It's spelled out very clearly about what the 15 expectations are for the rider program. There were no 16 unknown situations here in that regard. These are very 17 highly-structured programs. And if Mr. Parker views 18 those as unknown situations that cause him to act out or 19 to break the rules or potentially to break laws, I don't 20 know what programming -- what community-based 21 programming would be sufficient for it to be considered 22 an -- you know, a known situation for Mr. Parker to be 23 successful.</p> <p>24 He had numerous individuals that he could have 25 contacted in both of those programs. The drug court</p> <p style="text-align: center;">56</p>
<p>1 program to begin with. Officer Craddock from probation 2 and parole was a resource there, as well as the 3 therapist and counselors. And in the rider program 4 itself he could have reached out to counselors. He 5 didn't do so. And his continued behavior of breaking 6 the rules is a serious concern for the state and I 7 believe it presents -- Mr. Parker at this point presents 8 a risk to the community.</p> <p>9 So I'll wrap up on that, your Honor. I would 10 ask if the Court is to relinquish jurisdiction, on the 11 issue of restitution it looks like there may be some 12 outstanding restitution issues on the newer case. The 13 state would request that that remain open for a period 14 of 30 days just so we can make sure that all financial 15 obligations can be met.</p> <p>16 Thank you.</p> <p>17 THE COURT: Defense's recommendation, please.</p> <p>18 MR. LOGSDON: Your Honor, when I met Michael 19 three years ago, the very first time that I saw him, he 20 disclosed to me he was being abused by his father, but 21 he described it more as verbal and kind of tough love 22 for kind of nonsense he was getting himself into. And I 23 really didn't think about it much since then because my 24 dad was tough, too, so whatever.</p> <p>25 The only thing that I knew about Michael</p> <p style="text-align: center;">57</p>	<p>1 beyond that was that every time I would put him on 2 probation -- and, obviously, I'm not the one putting him 3 on probation -- but every time he would fail somewhat 4 spectacularly without not a long period of time. And 5 this happened over and over again and it was very 6 confusing to me because there's nothing about Michael 7 that would cause one to think that that's going to 8 happen. Other than, of course, the fact that he's 9 addicted to Oxycontin and has a bunch of other issues 10 going on. But you have a lot of kids that have those 11 kinds of things and they don't necessarily do these 12 kinds of things over and over again.</p> <p>13 And so I feel, frankly, really badly, about 14 how this all worked out. Because if I had thought about 15 it and knew what I do now about the way that people 16 behave and had not met him a long time ago; and, 17 therefore, it's become normal to me that, oh, that's 18 what Michael does, I probably would have asked for a 19 mental health evaluation three years ago and he never 20 would have gotten here and all of this would have been 21 avoided.</p> <p>22 But I didn't really know what I was doing and 23 nobody else noticed anything and he -- he just -- it 24 just got worse and worse. He failed out of drug court 25 because he literally ran from his probation officer,</p> <p style="text-align: center;">58</p>

APPENDIX B

1 of this. I have seen Michael -- you know, I was there
2 for his child protection cases. I was there for all of
3 it. He's a very good person who is -- and now I have
4 some idea why -- he's a complete mess.

5 And, you know, I feel terrible that we did not
6 get around to this years ago. We could have saved
7 everyone a lot of heartache, but I don't think that -- I
8 don't think that sending him to prison is, at this
9 point, necessary. And I know the statute says, you
10 know, we tried -- we really tried to do everything we
11 can for him and we just say we're done. And with
12 Michael, you know, I really think the Court has to
13 consider the fact that we just didn't -- we had not
14 recognized the underlying issues here and they had not
15 been treated.

16 And I think we need to give him a chance to
17 see whether or not if he's getting the proper help, he
18 can actually be successful on probation. You know, when
19 I, for my own personal life and the other clients that
20 I've dealt with, you know, mental illness is a real
21 thing and it's sort of like telling a guy who's lost his
22 leg, you know, walk it off. He can't do it. He's not
23 getting the right help.

24 So that's what he would ask the Court to do.
25 Thank you.

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1 couple probation violations later in 2011.

2 Then you were convicted of trespass in 2011.
3 Resisting and obstructing an officer when you
4 were 22 in 2012.

5 A joyride in 2013.

6 So it's not as if that makes you public enemy
7 No. 1, but it is a situation where there was an impact
8 on our community. It wasn't as if you were just hurting
9 yourself, you were stealing things from people. You
10 were resisting police. You were trespassing on
11 property. You were riding in vehicles that you had no
12 authority to ride in. And so you were tried in the drug
13 court program and the -- you left treatment in that
14 program. You associated with known felons. You missed
15 your UA's and you were pretty much using alcohol and
16 methamphetamine while you were in that treatment
17 program.

18 The Court is aware that you have done other
19 treatment. You have done the Sundown M Ranch treatment
20 in 2011. And it just appears that methamphetamine,
21 marijuana, Oxycontin, just had a grip on you. But you
22 were becoming a danger to people and a danger to
23 property and a danger to our community with your
24 inability to get that under control. So the Court
25 utilized the retained jurisdiction program in April of

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1 THE COURT: Thank you. We're off the record
2 for a moment.

3 (Off the record.)

4 THE COURT: We're back on the record.

5 Mr. Parker, this is the time set for the Court to make
6 its discretionary decision regarding the proper order
7 following your jurisdiction review period. And I think
8 it's appropriate to go back to the beginning here and to
9 remember that these were fairly serious crimes. These
10 were not just crimes of drug possession, which the Court
11 considers serious crimes, but these were crimes where
12 society was impacted.

13 People were impacted by them. In August of
14 2013 there was the burglary matter where a stolen
15 firearm was being pawned at Pawn 1 for you to get money
16 from the sale of stolen property. By September of 2013
17 you were in possession of an iPad tablet. Pawned that
18 at the Double Eagle Pawn in Spokane; another stolen
19 property for money.

20 And I looked back at the criminal history,
21 which wasn't exactly the worse, but it was somewhat
22 significant. You had a minor in possession of alcohol
23 conviction when you were 20.

24 Petit theft and probation violation in 2011.
25 Ended up with an inattentive driving and a

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1 2014. And I think it's appropriate especially since the
2 two good chaplains have been to court to talk about
3 their perceptions that maybe you melted down out of fear
4 of the upcoming release because I don't think the record
5 supports that at all.

6 Mr. Parker arrived at the rider program on
7 May 26th, 2014. His estimated completion date of that
8 program was October the 3rd of 2014.

9 Within a short time after his arrival -- I
10 mean, probably less than two weeks, he gets a
11 disciplinary offense report for possessing the Buspar
12 and he did it pretty much repeatedly. So -- and
13 possessing it in a wrong way, the misuse of it. So
14 almost immediately he's violating the conditions of his
15 rider in a serious way.

16 About two weeks after that -- or maybe even
17 eight days after that, there were pills found hidden in
18 the bed. This was a new DOR for him to face.

19 About a week after that, on June 20th -- and
20 this is, again, we're talking about almost four months
21 out from the completion date, he's wanting to
22 self-relinquish out of the program. Just get me out of
23 here. I'm not going to be able to do it.

24 By June the 27th, a week later, he reported a
25 stolen radio. Later admitted that that was a lie. That

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1 he made that up that he was a victim of a theft.
2 July the 16th he committed a new disciplinary
3 offense. Got a report out of that on the unauthorized
4 transfer of property.

5 By July the 17th the team sanctioned him and
6 then finally decided that they would recommend a
7 jurisdiction review.

8 So the Court simply doesn't buy this issue
9 that you were melting down out of fear of being
10 released, that you just couldn't handle the prospect of
11 release; you weren't even close to release yet. You
12 weren't even close to getting out. You violated the
13 terms of that rider immediately, as you had done in some
14 other programs as well.

15 The Court continues to have four factors of
16 sentencing before it. Those factors include protecting
17 society the best way that the Court can. Deterring you
18 and deterring others from criminal conduct. Punishing
19 you in a way that society expects under all of these
20 circumstances. Then how to help any rehabilitative
21 measures that can be aided by a sentence.

22 I'm accepting the proposition that you have
23 had a disturbing young life. That you've been the
24 victim of crimes perpetrated against you. And that
25 your, really, inability to get your life into any kind

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1 you've had to face and it must be difficult, but the
2 Court doesn't find anything in here that means you are
3 unable to comport yourself in a way that's expected.

4 You have -- I continue to believe that you're
5 a man of free will and you have choices and what -- you
6 made choices to victimize people and make yourself a
7 danger. Not public enemy No. 1, but a danger.

8 Based on that, the Court exercises its
9 discretion by relinquishing jurisdiction in this matter
10 and you are remanded to the bailiff to begin the service
11 of this prison sentence.

12 The sentence was five years; two fixed
13 followed by three indeterminate in each case. They run
14 concurrent with each other and I do not modify those
15 sentences at all.

16 Any questions from the state?

17 MS. MALEK: No, your Honor. Thank you.

18 THE COURT: Any questions from the defense?

19 MR. LOGSDON: No, your Honor. Thank you.

20 THE COURT: Then you're remanded to begin the
21 service of that sentence. The Court is entering a civil
22 judgment. I'm not retaining jurisdiction over the
23 matter. In fact, I don't think I can. I'm entering a
24 civil judgment in the amount that was proposed by the
25 state previously.

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1 of control and order, certainly one has to look at that
2 as a situation that contributes to that. You yourself
3 have contributed to it as well with the chronic use of
4 methamphetamine and Oxycontin and marijuana.

5 One may say, well, you're medicating yourself
6 because of the trauma, or do you just like being high
7 rather than not being high, or a combination of those
8 things?

9 I don't know that we can just necessarily say,
10 well, you -- you've used these drugs routinely
11 throughout your life in great amounts because of the
12 abuse. It may -- there may be some hand-in-hand
13 correlation to that, but it may also just be that you
14 just like getting high and a combination thereof.

15 So because of that then you've tried various
16 treatment programs. And as your lawyer has said -- and
17 accurately so -- you failed quickly at them. We've
18 tried this rider program and it's failed. And I -- I
19 don't discount at all that you have dealt -- had to deal
20 with some tremendous challenges in your life.

21 But what the Court reads in the mental health
22 evaluation is not with panic disorder and with anxiety
23 and with that sort of thing. It's this is not a
24 situation that makes you unable to conform your conduct
25 to what people expect. Certainly it's a challenge that

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1 MS. MALEK: Thank you, your Honor.

2 THE COURT: And I will sign that later so that
3 that we can move on to some other cases here.
4 (Matter adjourned.)
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APPENDIX C

1 through family or through, you know, things that it was
2 said in discovery. I would just like the judge to
3 realize that.

4 I am, you know, I'm -- I'm only 23 years old
5 and I have a lot of life ahead of me and I believe since
6 I've been down this year and a half I've learned more
7 and gained more responsibility and held more
8 accountability through the realization that, you know,
9 the little mistakes, no matter what it is, the little
10 bit of leeway I give myself can get me in the utmost
11 trouble and just to really just reconsider.

12 MR. LOGSDON: No further questions, your
13 Honor.

14 THE COURT: Any questions from the state?

15 MR. ROBINS: No questions, your Honor. Thank
16 you.

17 THE COURT: All right.

18 Any other evidence then, Mr. Logsdon?

19 MR. LOGSDON: No, your Honor. Thank you.

20 THE COURT: Any evidence from the state?

21 MR. ROBINS: No, your Honor. Thank you.

22 THE COURT: Then I'll hear your argument,
23 Mr. Logsdon.

24 MR. LOGSDON: Well, your Honor, this was a
25 particularly difficult case for me. I've known Michael

8

1 THE DEFENDANT: Oh, Pastor Rick is -- would be
2 post Pastor Tim's.

3 THE COURT: Understood.

4 MR. LOGSDON: Okay. So both. Sounds like
5 that's a very good plan, however it is that he does it,
6 but I would imagine he would prefer to do that now
7 rather than spend much more time on the yard, and so I
8 believe that's what would be our request.

9 Thank you.

10 THE COURT: What's the state's position,
11 please?

12 MR. ROBINS: State would oppose a Rule 35,
13 your Honor. We haven't heard any significant new
14 information that rendered your original verdict
15 unreasonable or unjust. He did flop essentially the
16 drug court program. He performed dismally on his
17 jurisdictional review. I don't believe there's been
18 sufficient evidence put to this Court to disturb your
19 original determination that imprisonment was necessary
20 to meet the goals of sentencing. So we ask that you
21 leave your sentence undisclosed at this time based on
22 Toohill the factors.

23 With that, we respectfully submit. Thank you,
24 sir.

25 THE COURT: Thank you.

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1 for many years and I had seen him fail while he was on
2 probation over and over again and never really
3 understood why. And it wasn't, unfortunately, until
4 after, you know, drug court and then going on a rider,
5 which he did not do well on, and coming back that we
6 kind of finally got into some of his mental health
7 issues that they just had never been, sort of, clearly
8 brought up before and I think a lot came out.

9 And he was able to make, I think, a certain
10 amount of strides just in the Kootenai County Jail, it
11 sounds like, since he's been down. He's been doing
12 actually still quite a bit in terms of working on
13 himself. I think it sounds like the Pastor Tim's
14 program would still take him in, so I believe it sounds
15 like to me what he would ask the Court to do is to
16 reconsider, place him back on probation with the
17 requirement that he go through Pastor Tim's and allow
18 him to -- or I guess I wasn't entirely clear if he's
19 doing Pastor Tim's or if he was talking about the other
20 fellow that he said came and saw him, but he said just
21 "pastor," I'm a little confused.

22 THE COURT: Were you intending, Mr. Parker, to
23 go to the Good Samaritan treatment program or to some
24 program where the person, Pastor Rick, that you
25 mentioned?

9

1 Mr. Parker, what did you have a surgery for?

2 THE DEFENDANT: In Kootenai County, when I was
3 on suicide watch, they just removed a paper clip that I
4 swallowed.

5 THE COURT: Yes. Okay.

6 Anything else from the defense in light of the
7 Court's questions?

8 MR. LOGSDON: No, your Honor.

9 THE COURT: Any reply to the state's argument?

10 MR. LOGSDON: No, your Honor.

11 THE COURT: Anything else from the state?

12 MR. ROBINS: No, your Honor. Thank you.

13 THE COURT: Well, Mr. Parker, I continue to
14 have the four factors of sentencing in my mind that
15 we've talked about before. The Court knows this is
16 discretionary whether to grant a Rule 35 sentence
17 reduction motion.

18 The factors that we've talked about, of
19 course, include protecting society and deterrence and
20 punishment and rehabilitation. We've been through those
21 with you a few times and I know you've heard the Court.

22 The Court was aware of the prior criminal
23 history coming into this case. Mr. Parker had an
24 alcohol problem -- minor in possession of alcohol when
25 he was 20 years old.

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<p>1 Petit theft and a probation violation later in 2 that same year when he was 20 years old. 3 And in 2011 I think there was an inattentive 4 driving that was reduced from a DUI. 5 He had a trespass conviction at age 21. 6 A resisting an officer conviction at age 22. 7 A joyriding conviction at age 23. 8 And then he had a history of marijuana and 9 methamphetamine, oxycodone -- or Oxycontin use since his 10 late teenage years. 11 He had been to the Sundown M Ranch treatment 12 program, an inpatient residential treatment program in 13 2011. 14 He was granted an opportunity to do drug court 15 upon these convictions for burglaries. And the Court 16 was aware these weren't your classic, you know, wear a 17 mask and break into a house middle of the night 18 burglaries; it was he had entered a residence to take 19 his stepfather's iPad tablet and then pawned it for 20 money to pay for drugs and then he also stole a firearm 21 and pawned it as well for some drug money. 22 The Court used a retained jurisdiction in 23 April of 2014 and it was the traditional form of 24 retained jurisdiction. Mr. Parker had significant 25 disciplinary offenses or warnings down there. He had a</p> <p style="text-align: center;">12</p>	<p>1 disciplinary offense report in June of 2014 where he had 2 been in possession, I want to say, of some alcohol even 3 that had been probably smuggled in or brewed there or 4 however one gets alcohol on a rider program. 5 He had written warnings for having some 6 contraband he's not supposed to have. He had some pills 7 that were found hidden in his bed. This was different 8 from the disciplinary offense report. 9 He was talking about wanting to 10 self-relinquish or drop out of the program in the latter 11 part of June. He reported to the authorities that he 12 had had a radio stolen from him. It was later 13 determined that that was a false report. He had a 14 disciplinary offense report in July regarding the 15 unauthorized transfer of property from one inmate to 16 another. 17 And then the jurisdiction review report 18 essentially said that Mr. Parker was just demonstrating 19 no willingness to change or inability to change maybe. 20 There was just no measurable progress that he was 21 making. They recommended relinquishing jurisdiction. 22 In light of all those circumstances, the Court 23 did relinquish jurisdiction and the sentence was a 24 five-year sentence; two fixed followed by three 25 indeterminate, concurrent in each count.</p> <p style="text-align: center;">13</p>
<p>1 The Court relinquished jurisdiction and the 2 Court has heard really nothing today to indicate that 3 that sentence was an inappropriate sentence. I think it 4 continues to be entirely appropriate that Mr. Parker 5 work toward release if release is granted to him on 6 parole or whenever that may be by working his pathways 7 and working toward that parole-type release, but motion 8 for sentence reduction under Rule 35 is denied. 9 Can the state please present an order to the 10 Court consistent with the Court's ruling? 11 MR. ROBINS: Yes, your Honor. 12 THE COURT: Any questions, Mr. Logsdon? 13 MR. LOGSDON: No, your Honor. 14 THE COURT: Any questions, Mr. Parker? 15 THE DEFENDANT: No, sir. Thank you so much. 16 THE COURT: You're welcome. 17 Any questions, Mr. Robins? 18 MR. ROBINS: No, your Honor. 19 THE COURT: Then you are excused and we are in 20 recess until 2:00 o'clock. 21 (Matter adjourned.) 22 23 24 25</p> <p style="text-align: center;">14</p>	